UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA **v.** **Antonio Lamotta,** **Defendant.**	**Case No. 22-cr-320 (JMC)**

ANTONIO LAMOTTA'S MOTION IN LIMINE TO EXCLUDE EVIDENCE PURSUANT TO FEDERAL RULE OF EVIDENCE 404(b)

Antonio Lamotta, through counsel, moves the Court to exclude improper 404(b) evidence. Specifically, the government has noticed its intent to introduce evidence of prior bad acts from an incident that occurred in November of 2020 where Mr. Lamotta was (1) accused but not convicted of election interference and (2) was convicted of two firearms charges. *See* Exhibit 1, Gov. 404(b) Notice. The government has not demonstrated that this evidence is probative of a material issue other than character and any minimal probative value is not outweighed by its unfair prejudice to Mr. Lamotta.

Legal Standard

Federal Rules of Evidence 404(b) provides that evidence of prior crimes "is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). The rule against introducing character evidence, also known as "propensity evidence," is not based on the idea that the evidence of a defendant's character is irrelevant. On the contrary, it is based "**on a fear that [the fact-finder] will tend to give it excessive weight, and on a fundamental sense that no one should be convicted of a crime based on his or her prior misdeeds**." *United States v. Daniels*, 770 F.2d 1111, 1116 (D.C. Cir. 1985) (emphasis added); *see also Michelson v. United States*, 335 U.S. 469, 475-76 (1948) (finding that prior bad acts evidence offered to show propensity "is said to weigh too much with the [fact-finder] and to so over persuade them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge").

A two-step test governs admissibility of evidence in connection with Rule 404(b) in the D.C. Circuit. First, the Court must determine whether the evidence is "probative of some material issue other than character." *United States v. Clark*, 24 F.3d 257, 264 (D.C. Cir. 1994). Second, if the Court finds the evidence relevant to a non-character issue, it still will be excluded if it is inadmissible under any other "general strictures limiting admissibility." *United States v. Miller*, 895 F.2d 1431, 1435 (D.C. Cir. 1989), *cert. denied*, 498 U.S. 825 (1990). Most important among these strictures is Rule 403. *United States v. Washington*, 969 F.2d 1073, 1081

(D.C. Cir. 1992). Under Rule 403, prior crimes evidence will be excluded if it's probative value "is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by . . . needless presentation of cumulative evidence." *United States v. Long*, 328 F.3d 655, 662 (D.C. Cir. 2003); Fed. R. Evid. 403. The government fails both steps of the test in this case.

ARGUMENT

I. The government's evidence is inadmissible character evidence under Rule 404(b).

The government has noticed its intent to potentially introduce evidence that Mr. Lamotta traveled to Pennsylvania during the 2020 Presidential Election to a Philadelphia vote-counting location while openly carrying a handgun without a permit. The government also wishes to introduce text messages and social media related to this trip. However, after a trial on these allegations, Mr. Lamotta was acquitted of any allegations of election intimidation or interference. He was convicted of two firearms charges. The government claims that this information is relevant to Mr. Lamotta's motive and intent when he entered the U.S. Capitol on January 6, 2021. *See* Exhibit 1, Gov. 404(b) notice at 2. However, the government is incorrect that this information is relevant to motive or intent and it has failed to demonstrate that this information relevant to a material issue other than character pursuant to the required factors in Rule 404(b).

Notwithstanding the fact that Mr. Lamotta was acquitted of any wrongdoing surrounding alleged attempts to interfere with the 2020 Presidential election in

Philadelphia, these allegations are simply not relevant to an allegation now that he knowingly trespassed at the U.S. Capitol building and allegedly disrupted Congress.[1] There is absolutely zero nexus between a vote counting location in the state of Pennsylvania and the U.S. Capitol building. *United States v. Brown*, 250 F.3d 580, 585 (7th Cir. 2001) (government was able to show pattern and similarity in both incidents). There can be no credible claim that allegedly interfering with a vote count in Pennsylvania is relevant to prove intent that Mr. Lamotta knew he was not supposed to be inside the Capitol building and that he intended to disrupt Congress on January 6, 2021.[2]

Furthermore, there can be no real claim that a firearm conviction bears any relevance to motive, intent, or knowledge of the alleged offenses in this case. Firstly, Mr. Lamotta's firearm convictions from October 2022 relate specifically to the lack of any permit to carry firearms in Pennsylvania. Regardless, there is still no logical connection between those prior firearm charges and the instant allegations in that

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[1] There is general disfavor for using acquitted conduct to enhance a defendant's sentence and the same principles should be applied here. *See United States v. Baylor*, 97 F.3d 542, 549-51 (D.C. Cir. 1996) (Wald, J., concurring specially explaining "at the least it ought to be said that to increase a sentence based on conduct..for which the defendant was acquitted does raise concerns about undercutting the verdict of acquittal."). The Sentencing Commission was supposed to address the issue of acquitted conduct earlier this year, however has deferred the issue for next year. In expressing the Court's dissatisfaction for having to deny certiorari in a case dealing with acquitted conduct, Justice Sotomayor said that if the Sentencing Commission delays any further or chooses not to act, that "this Court may need to take up the constitutional issues presented." *Dayonta McClinton v. United States*, 600 U.S._____(2023).

[2] The government provided the discovery from the case in Pennsylvania and there is no real evidence that he "interfered" with the vote count. He was arrested while standing outside the Philadelphia Convention Center with no incident. The government's evidence was solely based on text messages that the jury did not find to be interference and instead found he did not have an intent or motive to interfere with the vote count.

he is not being charged with unlawfully possessing a firearm on January 6, 2021 and he was unarmed on that day. *See United States v. Caldwell*, 760 F.3d 267, 281-83 (3d Cir. 2014) (finding that the government failed to articulate a "logical chain of inferences showing how the defendant's prior convictions are relevant to show his knowledge"). In *U.S. v. Gomez*, 763 F.3d 845, 856 (7th Cir. 2014), the Court reasoned:

> We have cautioned that it's not enough for the proponent of the other-act evidence simply to point to a purpose in the "permitted" list and assert that the other-act evidence is relevant to it. Rule 404(b) is not just concerned with the ultimate conclusion, but also with the chain of reasoning that supports the non-propensity purpose for admitting the evidence.

Here, there is no chain of reasoning that can support admitting evidence of either (1) allegations of election interference in 2020, or (2) prior firearm convictions.

II. The Government's Proposed Evidence is Unfairly Prejudicial and has No Probative value.

While Mr. Lamotta understands that a bench trial is different than a jury trial, the Court should still prohibit evidence that is unduly prejudicial, especially when the probative value is *de minimus*. Under Rule 404(b), the government also fails the second prong of the test because the probative value or its proposed evidence is "substantially outweighed by a danger of…unfair prejudice, confusing the issues, [or] misleading the [fact-finder]." Fed. R. Evid. 403. The term "unfair prejudice," as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to "lure the factfinder into declaring guilt on a ground different

from proof specific to the offense charged. *Old Chief v. U.S.* 519 U.S. 172, 180 (1997).

Any evidence regarding potential election interference or carrying a firearm openly only has one purpose – and that is to inflame the passions of the fact-finder. In this case, the probative value is "microscopic at best." *See United States v. Jenkins*, 593 F.3d 480 (Sixth Cir. 2010) (finding that the government had the availability of other means of proof and so admission of defendant's prior convictions was unfairly prejudicial). *See also United States v. Queen*, 132 F.3d 991, 995 (4th Cir. 1997) (laying out the Fourth Circuit's four-step inquiry requiring that the prior bad act evidence be "necessary to prove an element of the crime charged.").

In *United States v. Loza*, 764 F. Supp. 2d 55, 58 (D.D.C. 2011), the district court found that admission of a prior bribe to prove intent to accept a bribe in the offense at issue was more prejudicial than probative. The Court reasoned that "the probative value is limited and is – at this stage – substantially outweighed by the danger of unfair prejudice, confusion of issues….). *Id.* In this case, the government is essentially trying to say that because there was a prior allegation that Mr. Lamotta tried to interfere with the election before that it must mean he tried to disrupt Congress in some way on January 6, 2021. Not only is this just sheer propensity evidence, the microscopic probative value of it is greatly outweighed by the unfair prejudice that will result if admitted, especially in light of the government's availability of other means of proof. As a result, the evidence must be excluded under Rule 403.

Conclusion

For the above reasons, Mr. Lamotta requests that the Court grant his motion to preclude improper 404(b) evidence.

Respectfully Submitted,

A.J. KRAMER
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